

**Regeneration and Public Protection Cabinet  
Member Meeting**



**8<sup>th</sup> March 2019**

**ITEM 6**

Report sponsor: Verna Bayliss, Acting Director  
of Planning & Transportation  
Report author: Ray Brown, Senior Planning  
Officer

**Revision of Rights of Way and Town and Village Green Fees**

**Purpose**

- 1.1 To review the fees that Derby City Council charges for Public Path Orders (PPOs) and other rights of way services. The charges are being reviewed now because of the delay in the release of the regulations of the Deregulation Act 2015, which will revise how public path order fees can be collected. Whilst these applications are infrequent and additional fee income will be relatively modest, there will nevertheless be an increase in fee income that will cover costs more effectively

**Recommendation**

- 2.1 To approve revised Council fees as set out in Appendix 1.

**Reason**

- 3.1 The current charges for rights of way and town and village green processes do not reflect the full costs to the Council.

**Supporting information**

- 4.1 The Council, as a highway authority, is allowed to recover reasonable costs for the making of public path orders under the Highways Act 1980 through Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (S.I. 1993/407), amended by Regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (S.I. 1996/1978).

- 4.2 The regulations give the Council the power to charge applicants for making orders under sections 26, 118, 118A, 119 and 119A of the Highways Act 1980. The Council, as local planning authority, can also charge for public path orders made under Section 257 Town and Country Planning Act 1990, to allow development to take place. A highway authority cannot charge an applicant any additional costs, however, if it decides to pursue an opposed order. This means that any costs incurred after we forward an order to the Secretary of State will be at our own expense. The orders that the Council normally makes are:
- Public path extinguishment orders under Section 118 Highways Act 1980; and
  - Public path diversion orders under Section 119 Highways Act 1980;
- 4.3 The Council can also apply for the making of extinguishment orders by the Magistrates' Court under Section 116, Highways Act 1980. When the Council is applying on behalf of a landowner/developer, it can charge a fee. The Council's Highways division has already set a fixed charge of £3000 for Magistrates' orders. We also ask for an indemnity to be signed so we are able to recoup any other costs (either already known about or possible unknown costs in the future) should we need to.

### **Public Path Orders**

- 4.4 The current fee for making a public path order in Derby City is made up of two parts; the first a fixed fee of £400 for staff time and the other to recover advertisement costs, typically an additional £800. These fees have not been revised for many years and no longer reflect the costs of processing these orders.
- 4.5 Whilst the Council can increase its charges under existing legislation, we were waiting for the Deregulation Act 2015 to come into effect, as it would give more flexibility over what we can charge for. These new regulations have been delayed and so it is proposed to increase fees now rather than wait any longer for them to come into effect. There may therefore be a need for a further review when the new regulations do come into effect.

4.6 When assessing fee charges, we need to determine what costs we are likely to incur. According to the Defra's Rights of Way Circular (1/09), examples of the costs which authorities may incur in making an order include:

- notifications and negotiations with landowners, statutory undertakers, prescribed organisations, and other interested parties and individuals
- posting notices on site and site inspections;
- placing advertisements in a local newspaper for the making of the order, confirming the order and when required, the coming in to force of the order;
- research into the status and previous history of the way;
- preparing orders; and
- preparing reports for Committee.

The circular also states that “authorities should publish their scales of charges and should inform applicants in advance of the maximum charge for their application. Authorities must not charge more than the costs they have incurred.”

4.7 There are two possible ways we could charge applicants. They are:

- an all inclusive fixed fee which would cover all the costs referred to in para. 4.6.
- a fee based on an hourly rate and separate charges to recoup advertisement costs.

The advantage of the fixed charge is that it is less complicated to calculate for the Council and the applicant knows from the beginning of the process what the final charge is likely to be. Fixed fees are the most commonly used and our own existing mechanism is a fixed charge. Fees for planning applications are also based on fixed charges rather than hourly rates. This mechanism has proven to be reliable and fair over the decades.

The disadvantages of the fixed charge are that the time spent on orders can vary greatly. It is also possible that an order may not progress to the confirmation stage, but the fee would still be fixed. An hourly rate would provide more flexibility to reflect actual costs incurred.

4.8 Overall, it is considered that the advantages of a fixed charge outweigh the disadvantages.

4.9 We have reviewed charges by other councils and some examples of these are set out in Appendix 2. For instance, Nottingham City Council which is comparable in size and population to our own, charges a £3,000 flat fee for public path orders. This is based on an estimate of the cost of the time taken to process a typical public path order.

4.10 A typical Public Path Order processed by Derby City Council will incur on average 50 hours of staff time, plus costs for advertisements. As with Nottingham, a flat rate fee of £3,000 will cover these and allow for small differences in the time taken to process each order.

## **Landowner Statements and Declarations**

- 4.11 Landowners can make Statements and Declarations under Section 31(6) of the Highways Act 1980 regarding the existence of public rights of way on their land. They can also make Statements and Declarations under Section 15A (1) of the Commons Act 2006 regarding the existence of Town and Village Greens. Local Authorities can charge for processing these, typically for:

- the registration of an application,
- the placing of site notices,
- the sending of notifications.

A fee can be charged for each individual application. A Highways Act declaration following the deposit of a statement is regarded as a new application and normally has a separate fee.

- 4.12 As there is currently no fee schedule for this work, it is proposed that the rates set out in Appendix 1 of this report are adopted. These rates are consistent with those of other local authorities in the region and nationally. Some examples of these are set out in Appendix 3 for information.

## **Public/stakeholder engagement**

- 5.1 None.

## **Other options**

- 6.1 Retaining fees at their current rate is not sustainable as the amount charged does not cover costs to the Council of undertaking the necessary work.
- 6.2 A revised fee schedule could be deferred until the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 come into effect. However, this could be some time away.
- 6.3 A range of different charges were considered as set out in Appendices 2 & 3.

## **Financial and value for money issues**

- 7.1 The charging of fees allows the Council to recover its costs in making public path orders and process applications for statutory rights of way and town and village green statements and declarations.
- 7.2 The fee schedule will be reviewed from time to time and not less than every five years, to ensure they continue reflect the cost of undertaking these processes.

## Legal implications

- 8.1 Local Highway Authorities have the power to charge for the making and confirmation of public path orders under the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993, as amended, to the Housing and Local Government Act 1989.
- 8.2 Registration authorities have the power to charge for the processing of statements related to town and village greens under the Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013 to the Commons Act 2006.

## Other significant implications

- 9.1 None.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Stephen Teasdale	
Finance	Amanda Fletcher	
Service Director(s)	Verna Bayliss	
Report sponsor	Verna Bayliss	
Other(s)	Andrew Waterhouse	

## Appendix 1

### Proposed fees for public rights of way and town and village greens

Fee for processing of public path orders (including advertisement costs).	£3,000
A deposited statement and plan made under Section 31(6) of the Highways Act 1980.	£300
A deposited statement and plan made under Section 15A (1) of the Commons Act 2006.	£300
A deposited statement and plan made under both Section 31(6) of the Highways Act 1980 and under Section 15A (1) of the Commons Act 2006.	£400
A statutory declaration relating to a current statement and plan made under Section 31(6) of the Highways Act 1980.	£200
Any additional parcels of land included in a deposited statement and/or declaration made under Section 31(6) of the Highways Act 1980 and/or under Section 15A(1) of the Commons Act 2006.	£50 per parcel

## Appendix 2

### Examples of fees that East Midlands local highway authorities charge for the making of public path orders.

Local authority	Fee
Derby City Council	£400 plus advertisement costs (total fee normally £1100 - £1200)
Derbyshire County Council	<ul style="list-style-type: none"><li>• £36.92 an hour (pre-order consultation and reporting to committee)</li><li>• £50 an hour (order making and statutory consultation)</li></ul>
Leicestershire County Council	£1,250 plus advertisement costs
Lincolnshire County Council	£1,700 plus advertisement costs
Northamptonshire County Council	£5,250 plus advertisement costs
North Lincolnshire Council	Maximum fee of £1,500
Nottingham City Council	£3,000 flat fee
Nottinghamshire County Council	£1,200 plus advertisement costs
Rutland County Council	£1,500 plus advertisement costs

**Examples of fees that local highway authorities charge for applications for landowner statements and declarations made under Section 31(6) of the Highways Act 1980.**

<b>Local authority</b>	<b>Fee</b>
Bedford Borough Council	£257.50 (statements and declarations)
Cheshire East Borough Council	£235 - statements £118 - declarations
Gateshead Borough Council	£400 plus £90 for additional parcels of land (statements and declarations)
Leicestershire County Council	£350 minimum (statements and declarations)
Lincolnshire County Council	£27.43/hour (statements and declarations)
Nottingham City Council	£300 (statements and declarations)
Rutland County Council	£179 (statements and declarations)
Staffordshire County Council	£206 - statement. £68 declarations

**Example of fees that registration authorities charge for applications for landowner statements made under Section 15A(1) of the Commons Act 2006.**

<b>Local authority</b>	<b>Fee</b>
Leicestershire County Council	£350 minimum

**Examples of fees that local highway authorities charge for combined Highways Act 1980 and Commons Act 2006 statements.**

<b>Local authority</b>	<b>Fee</b>
Leicestershire County Council	£600
Lincolnshire County Council	£37.77/hour
Nottingham City Council	Fee on request
Rutland County Council	£225 plus £25 for each additional land parcel



Staffordshire County Council	£445
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